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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,094	09/18/2001	Gervasio Mercuri	2217/50147	1011
23911	7590	07/06/2004	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/869,094	MERCURI, GERVASIO
	Examiner	Art Unit
	Catherine Simone	1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 February 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 45-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 45-66 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 45-47, 54-57 and 63-66** are rejected under 35 U.S.C. 102(b) as being anticipated by Levin (3,866,444).

Levin discloses a tubular casing structure for use with food products (see col. 1, lines 6-14), comprising circumferential threads extending around a periphery of a tubular casing and spaced at intervals along the tubular casing (Fig. 1, #12), the circumferential threads comprising an elastic thread (Fig. 5, #12b) in combination with a yarn (Fig. 5, #12c and 12d) wrapped around and along a length of the elastic thread (see col. 3, lines 21-27), wherein a number of turns of the yarn are inherently provided around the elastic thread for a given length of the circumferential threads so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the circumferential threads become inextensible before the elastic limit of the elastic thread is reached (see col. 3, lines 26-31). Regarding **claim 46**, note a knitted tube with the circumferential threads attached to the knitted tube (Fig. 1, #10; also see col. 2, lines 38-43). Regarding **claim 47**, the tubular casing is a tubular net comprising radially spaced longitudinal threads (Fig. 1, #11) in combination with the circumferential threads (Fig. 1, #12) and wherein the

circumferential threads comprise a continuous thread extending spirally along said tubular casing (Fig. 1, #12), the longitudinal threads comprise interlocking loop stitches (Fig. 2, #13a, 13b and 13c), each loop stitch extending between the circumferential threads (Fig. 2, #12). Regarding **claim 54**, note the tubular casing is a knitted tube (Fig. 1, #10) that is stretchable and impermeable to the food products and longitudinal threads (Fig. 1, #11) in combination with the circumferential threads (Fig. 1, #12), the circumferential (Fig. 1, #12) and longitudinal threads (Fig. 1, #11) secured to and spaced, respectively, along and around the knitted tube (Fig. 1, #10), being stretchable after the circumferential threads become taut. Regarding **claim 55**, the circumferential (Fig. 2, #12) and longitudinal threads (Fig. 2, #13a, 13b and 13c) are secured to the first tubular portion during knitting of the first tubular portion. Regarding **claim 56 and 63**, the circumferential threads (Fig. 1, #12) are secured to the knitted tube so as to form a continuous spiral along the knitted tube (see col. 2, lines 38-44). Regarding **claim 57, 64, 65 and 66**, the circumferential (Fig. 1, #12) and longitudinal (Fig. 1, #11) threads are secured to an outer surface of the knitted tube.

3. **Claims 45-47, 54-57 and 63-66** are rejected under 35 U.S.C. 102(b) as being anticipated by Krauss et al. (3,248,905).

Krauss et al. discloses a tubular casing structure for use with food products (see col. 1, lines 28-31), comprising circumferential threads extending around a periphery of a tubular casing and spaced at intervals along the tubular casing (Fig. 1, #13), the circumferential threads comprising an elastic thread (Fig. 4, #22) in combination with a yarn (Fig. 4, #28) wrapped around and along a length of the elastic thread (Fig. 4, #22), wherein a number of turns of the yarn (Fig. 4, #28) are inherently provided around the

elastic thread (Fig. 4, #22) for a given length of the circumferential threads (see col. 2, lines 1-6; also see Figs. 1 and 4, #13.) so that the circumferential threads become taut after a predetermined amount of stretch due to the yarn being straightened to an extent where the yarn resists tensile force whereupon the circumferential threads become inextensible before the elastic limit of the elastic thread is reached. Regarding **claim 46**, note a knitted tube with the circumferential threads attached to the knitted tube (Fig. 1, #10; also see col. 2, lines 27-30). Regarding **claim 47**, the tubular casing is a tubular net comprising radially spaced longitudinal threads (Fig. 1, #12) in combination with the circumferential threads (Fig. 1, #13) and wherein the circumferential threads comprise a continuous thread extending spirally along said tubular casing (Fig. 4, #28), the longitudinal threads comprise interlocking loop stitches (Fig. 2, #16, #18 and #20), each loop stitch extending between the circumferential threads (Fig. 2, #13). Regarding **claim 54**, note the tubular casing is a knitted tube (Fig. 1, #10) that is stretchable and impermeable to the food products and longitudinal threads (Fig. 1, #12) in combination with the circumferential threads (Fig. 1, #13), the circumferential (Fig. 1, #13) and longitudinal threads (Fig. 1, #12) secured to and spaced, respectively, along and around the knitted tube (Fig. 1, #10), being stretchable after the circumferential threads become taut. Regarding **claim 55**, the circumferential (Fig. 1, #13) and longitudinal threads (Fig. 1, #12) are secured to the first tubular portion during knitting of the first tubular portion. Regarding **claim 56** and **63**, the circumferential threads (Fig. 1, #13) are secured to the knitted tube so as to form a continuous spiral along the knitted tube. Regarding **claim 57, 64, 65 and 66**, the circumferential (Fig. 1, #13) and longitudinal (Fig. 1, #12) threads are secured to an outer surface of the knitted tube.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 48-52 and 58** are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin (3,866,444) in view of Mercuri (5,712,007).

Levin discloses the claimed invention as shown above. However, Levin fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 63-65) for the purpose of producing a tubular casing for food products.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a tubular fibrous casing located within and co-extensive with the tubular net in Levin as suggested by Mercuri in order to produce a tubular casing for food products.

Regarding **claim 49**, the circumferential threads become taut at a diameter which is substantially equal to the diameter of the tubular fibrous casing when it is filled (see col. 3, lines 52-63). Regarding **claim 50**, the diameter of the tubular fibrous casing is greater than the diameter of the tubular net prior to stretching of the circumferential threads so that the circumferential threads apply compressive force to the fibrous casing

as it is being filled (see col. 3, lines 39-50). Regarding **claim 51**, the diameter of the fibrous casing is between 2 and 4 times greater than the diameter of the tubular net prior to stretching of the circumferential threads (see col. 4, lines 6-10). Regarding **claims 52 and 58**, the diameter of the tubular net when the circumferential threads become taut is smaller than the diameter of the fibrous casing so that the circumferential and longitudinal threads press inwardly against the fibrous casing (see col. 3, lines 1-9).

6. **Claims 53 and 59-62** rejected under 35 U.S.C. 103(a) as being unpatentable over Levin (3,866,444) in view of Mercuri (5,712,007) and in view of Mintz (5,855,231).

Levin discloses the claimed invention as shown above. However, Levin fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 63-65) for the purpose of producing a tubular casing for food products. However, Mercuri fails to disclose the tubular fibrous casing having at least one pleat. Mintz teaches in the analogous art a fibrous casing having at least one pleat (Fig. 7, #44) for the purpose of locating the fibrous casing within the tubular net.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a fibrous casing folded flat with at least one pleat in Levin as suggested by both Mercuri and Mintz in order to produce a tubular casing for food products.

7. **Claims 48-52 and 58** are rejected under 35 U.S.C. 103(a) as being unpatentable over Krauss et al (3,248,905) in view of Mercuri (5,712,007).

Krauss et al. discloses the claimed invention as shown above. However, Krauss et al. fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 63-65) for the purpose of producing a tubular casing for food products.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a tubular fibrous casing located within and co-extensive with the tubular net in Krauss et al as suggested by Mercuri in order to produce a tubular casing for food products.

Regarding **claim 49**, the circumferential threads become taut at a diameter which is substantially equal to the diameter of the tubular fibrous casing when it is filled (see col. 3, lines 52-63). Regarding **claim 50**, the diameter of the tubular fibrous casing is greater than the diameter of the tubular net prior to stretching of the circumferential threads so that the circumferential threads apply compressive force to the fibrous casing as it is being filled (see col. 3, lines 39-50). Regarding **claim 51**, the diameter of the fibrous casing is between 2 and 4 times greater than the diameter of the tubular net prior to stretching of the circumferential threads (see col. 4, lines 6-10). Regarding **claims 52 and 58**, the diameter of the tubular net when the circumferential threads become taut is smaller than the diameter of the fibrous casing so that the circumferential and longitudinal threads press inwardly against the fibrous casing (see col. 3, lines 1-9).

8. **Claims 53 and 59-62** rejected under 35 U.S.C. 103(a) as being unpatentable over Krauss et al. (3,248,905) in view of Mercuri (5,712,007) and in view of Mintz (5,855,231).

Krauss et al. discloses the claimed invention as shown above. However, Krauss et al fails to disclose a tubular fibrous casing located within and co-extensive with the tubular net, the fibrous casing comprising an inner liner for the tubular net. Mercuri teaches it is old and well-known in the analogous art to have a tubular fibrous casing located within and co-extensive with a tubular net, the fibrous casing comprising an inner liner for the tubular net (see col. 4, lines 63-65) for the purpose of producing a tubular casing for food products. However, Mercuri fails to disclose the tubular fibrous casing having at least one pleat. Mintz teaches in the analogous art a fibrous casing having at least one pleat (Fig. 7, #44) for the purpose of locating the fibrous casing within the tubular net.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a fibrous casing folded flat with at least one pleat in Krauss et al as suggested by both Mercuri and Mintz in order to produce a tubular casing for food products.

#### ***Response to Arguments***

9. Applicant's arguments filed 2/19/04 have been fully considered but they are not persuasive. Applicants argue that "there is no showing in Krauss et al. of the relationship between the number of turns and the elastic limit of the elastic thread and further there is no indication that the thread becomes taught after a predetermined amount of stretch so

that the circumferential thread become inextensible before the elastic limit of the elastic thread is reached.” However, Krauss et al. clearly teaches an elastic thread (Fig. 4, 22) in combination with a yarn (Fig. 4, 28) wrapped around and along a length of the elastic thread and it is inherent that a number of turns of the yarn are provided around the elastic thread for a given length of the circumferential threads so that the circumferential threads become taut after a predetermined amount of stretch so that the circumferential threads become inextensible before the elastic limit of the elastic thread is reached. Regarding the Levin reference, Levin also clearly teaches an elastic thread (Fig. 5, 12b) in combination with a yarn (Fig. 5, 12C and 12d) wrapped around and along a length of the elastic thread and it is also inherent that a number of turns of the yarn are provided around the elastic thread for a given length of the circumferential threads so that the circumferential threads become taut after a predetermined amount of stretch so that the circumferential threads become inextensible before the elastic limit of the elastic thread is reached. Therefore, the claims fail to patentably define over the Levin reference and the Krauss et al. reference as applied above.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*CSS*  
Catherine Simone  
Examiner  
Art Unit 1772  
June 30, 2004

*Harold Pyon*  
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1992

1/1/04